



Petitioner's application for a Stay pending the outcome of an appeal to the Appellate Division of the Superior Court and documents submitted, I hereby DENY the requested relief.

It is well settled that when seeking a Stay, the moving party must establish (i) that irreparable injury will result if the relief sought is withheld, (ii) that there is a reasonable likelihood that the movant will prevail on the merits of the underlying claim; (iii) that the legal rights underlying the applicant's claim are well settled; and (iv) that, upon a balancing of the relative hardships, the harm to the movant from denial of the relief requested outweighs the damage to other parties from granting of the relief, and that the public interest supports granting the relief requested. Crowe v. DeGioia, 90 N.J. 126, 132-34 1982. The burden is on the movant to demonstrate entitlement to the relief requested by satisfying each of the applicable criteria. Id. At 143. Petitioner's moving papers do not establish these four prongs have been met and I FIND no basis to grant the relief requested.

On October 10, 2014, the Honorable Stuart A. Minkowitz, JSC, issued an arrest warrant and criminal complaint against Dr. Salerno. The criminal complaint alleged, among other things, that Dr. Salerno received monetary kickbacks for his referral of patients to American Imaging for diagnostic testing and that he failed to disclose violations of State and Federal healthcare regulations to Medicaid, Medicare and private health insurance providers pursuant to N.J.S.A. 2c:21-4-3(A). On October 29, 2014, the Office of the State Comptroller, Medicaid Fraud Division (MFD) issued a Notice of Suspension of Payments to Petitioner. Thereafter, on June 3, 2015, Petitioner was indicted by the State Grand Jury on Health Care Claims Fraud, Commercial Bribery and Runner charges.

In a thorough and well-reasoned decision, the Administrative Law Judge affirmed MFD's decision to suspend Petitioner and the November 20, 2015 Final Agency Decision adopted the ALJ's Initial Decision. As I explained in the Final Agency Decision, the New Jersey Medical Assistance and Health Services Act provides that the Director may suspend, debar or disqualify for good cause any provider who is presently participating or who has applied for participation in the Medicaid program. N.J.S.A. 30:4D-17.1(a) and N.J.A.C.10:49-11.1 (d). Among the twenty-seven enumerated reasons to suspend a provider are any offense indicating a lack of business integrity, a violation of the anti-kickback statute or any other cause affecting responsibility as a provider of Medicaid services as may be determined by DMAHS. N.J.A.C. 10:49-11.1(d)(2), (3) and (23). The existence of the cause for suspension may be established by: "a judgment or order of an administrative agency, or court of competent jurisdiction, or by a judgment of conviction, grand jury indictment, accusation, or arrest, or by evidence that such violations of civil or criminal law did in fact occur." N.J.A.C. 10:49-11.1(j)(5) (emphasis added).

Petitioner now presents a court order dated December 11, 2015, wherein Counts I and III of his June 3, 2015 indictment, which specifically addressed second-degree health care claims fraud and third degree runner charges, have been dismissed. Petitioner alleges that these charges formed the basis of the arrest warrant relied upon by MFD to issue the suspension and their dismissal severely undermines MFD's decision to suspend payment. I disagree. While the counts regarding health care claims fraud and runner charges were dismissed from the indictment, the commercial bribery charge remains. Pursuant to N.J.A.C. 10:49-11.1(d)(2), bribery is another of the enumerated reasons to suspend a provider and it remains as Count II of the June 3,



2015 indictment. Therefore, the dismissal of Counts I and III is insufficient to stay the suspension of Medicaid payments to Petitioner.

Furthermore, Petitioner has failed to establish all four prongs necessary to grant a stay. First, Petitioner has failed to articulate irreparable harm that meets the standards set forth by the New Jersey Courts to grant a stay. Petitioner alleges that this suspension will affect a sizeable portion of his income from those patients whose medical expenses are covered by Medicaid. However, mere financial loss does not constitute irreparable harm. Crowe v. DeGoia, 90 N.J. 126, 132 (1982). This is especially true since the Medicaid program is operated for the benefit of recipients and not providers. Second, Petitioner argues, without citation or support, that the suspension will negatively impact his patients' continuity of care. However, the suspension only affects the doctor's participation in the Medicaid program, and not his duty of care for his patients. Furthermore, it does not prevent Petitioner from practicing medicine. See Greenspan v. Klein, 442 F. Supp. 860, 862 (D.N.J. 1977). If Petitioner is cleared of all charges, he will have the opportunity to be reimbursed for those pended claims provided to Medicaid recipients. Third, Petitioner argues that because the kickback scheme has been eliminated and the money already withheld, the Medicaid program, unlike Petitioner, is no longer in any further danger of being compromised. As a result, Petitioner argues, the balancing of relative hardships favors the Petitioner. Again, while Petitioner will not be reimbursed for Medicaid services, he is not prevented from earning a living as a physician. The temporary suspension is reasonable in light of the State's substantial interest in the strict enforcement and proper administration of the Medicaid program in order to provide adequate medical treatment to the poor. See Jafari v. Division of Med. Assistance & Health Servs. And medicad Fraud Div., 2014 N.J. Super. Unpub. LEXIS 2184 (App. Div. Sept. 5, 2014). Finally, Petitioner does not

even address his likelihood of success on the underlying commercial bribery charge. Petitioner has not met his burden to show the Crowe factors were present to support the motion for injunctive relief.

THEREFORE, it is on this *21<sup>st</sup>* day of DECEMBER 2015

ORDERED:

That the Motion to Stay the Final Agency Decision is hereby DENIED.

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Valerie J. Harr, Director  
Division of Medical Assistance  
and Health Services

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